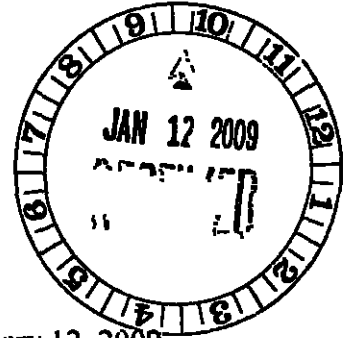


LAW OFFICES
FRITZ R KAHN, P C
FIFTH FLOOR
1020 N STREET N W
WASHINGTON DC 20036-1001

(202) 263-4152
FAX (202) 331-8330
e-mail: xiccgc@worldnet.att.net

224520
ORIGINAL



January 12, 2009

VIA HAND DELIVERY - RETURN COPY

Hon Anne K Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

ENTERED
Office of Proceedings

FEB 12 2009

Part of
Public Record

FILED

FEB 12 2009

**SURFACE
TRANSPORTATION BOARD**

Dear Secretary Quinlan

Enclosed for filing in Docket No AB-102 (Sub-No 13), Missouri-Kansas-Texas Railroad Company--Abandonment--in St. Charles, Warren, Montgomery, Callaway, Boone, Howard, Cooper and Pettis Counties, MO, are the original and ten copies of the Petition for Declaratory Order of State of Missouri, ex rel Missouri Attorney General

A letter from Karen King Mitchell, Esq., Chief Deputy Attorney General, requesting waiver of the \$1,400 filing fee, was electronically filed and mailed to you on January 9, 2009

Additional copies of this letter and of the Petition for Declaratory Order are enclosed for you to stamp to acknowledge your receipt of them

If you have any question concerning this filing or if I otherwise can be of assistance, please get back to me

Sincerely yours,


Fritz R Kahn

enc

cc Gabriel S Meyer, Esq

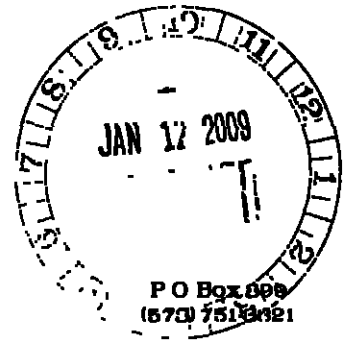
FILING FEE WAIVED



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W (JAY) NIXON
ATTORNEY GENERAL



January 9, 2009

Hon Anne K Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

FILED
FEB 12 2009
SURFACE
TRANSPORTATION BOARD

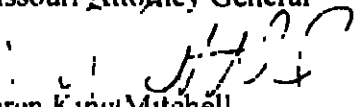
Dear Secretary General

On behalf of the Attorney General of the State of Missouri, I respectfully request the waiver of the \$1,400 fee for filing a Petition for Declaratory Order in Docket No AB-102 (Sub-No 13), Missouri-Kansas-Texas Railroad Company--Abandonment--in St Charles, Warren, Montgomery, Callaway, Boone, Howard, Cooper and Pettis Counties, MO

The State of Missouri in the proposed proceeding will be serving as neither a rail carrier nor a shipper. I shall be making the filing on behalf of the State, ex rel the Attorney General, the chief legal officer of the State.

Sincerely yours,

JEREMIAH W (JAY) NIXON
Missouri Attorney General


Karen King Mitchell
Chief Deputy Attorney General

ENTERED
Office of Proceedings
FEB 12 2009
Part of
Public Record

FILING FEE WAIVER

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

ORIGINAL

Docket No AB-102 (Sub-No 13)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
-- ABANDONMENT --
IN ST CHARLES, WARREN, MONTGOMERY, CALLAWAY
BOONE, HOWARD, COOPER AND PETTIS COUNTIES, MO



PETITION FOR DECLARATORY ORDER
OF
STATE OF MISSOURI, ex rel MISSOURI ATTORNEY GENERAL

James R Layton
State Solicitor
P O Box 899
Jefferson City, MO 65102
Tel (573) 751-0638

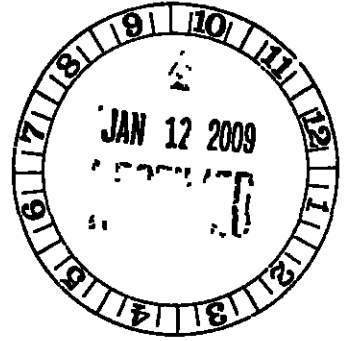
Fritz R Kahn
Fritz R Kahn, P C
1920 N Street, NW (8th fl)
Washington, DC 20036
Tel (202) 263-4152

Attorneys for

JEREMIAH W (JAY) NIXON
Missouri Attorney General

Dated January 12, 2009

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**



Docket No AB-102 (Sub-No. 13)

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
-- ABANDONMENT --
IN ST CHARLES, WARREN, MONTGOMERY, CALLAWAY
BOONE, HOWARD, COOPER AND PETTIS COUNTIES, MO**

**PETITION FOR DECLARATORY ORDER
OF
STATE OF MISSOURI, ex rel MISSOURI ATTORNEY GENERAL**

Petitioner, the State of Missouri, ex rel Jeremiah "Jay" Nixon, Missouri Attorney General, seeks the entry of a declaratory order to eliminate a controversy or remove uncertainty, and in support thereof Petitioner states, as follows

1 By its Decision, served March 16, 1987, the Interstate Commerce Commission ("ICC") authorized the abandonment of the 199 92-mile line of the Missouri-Kansas-Texas Railroad Company ("MKT"), which now is a part of the Union Pacific Railroad Company ("UP"), between Milepost 26 92 at or near Machens, St Charles County, and Milepost 226 84 at or near Sedalia, Pettis County, Missouri

2 On April 27, 1987, the ICC served its Decision and Certificate of Interim Trail Use or Abandonment ("CITU") providing a 180-day period for the MKT to negotiate an interim trail use agreement.

3 An Interim Trail Use Agreement was reached between MKT and the Missouri Department of Natural Resources ("MDNR") on June 25, 1987, a copy of which is attached as Exhibit A

4 By his letter to Mr Richard K Davidson, Chairman and Chief Executive Officer of the UP, dated December 23, 2004, a copy of which is attached as Exhibit B, Mr. Stephen Mahfood, the then Director of MDNR, noted that the right-of-way obtained pursuant to the Interim Trail Use Agreement now was the Katy Trail State Park and that the railroad lift bridge over the Missouri River at Milepost 191.1 near Boonville, Cooper County, should not be removed, as UP had proposed, because it was MDNR's intent to use the bridge for trail purposes

5. By letter to UP, dated May 20, 2005, a copy of which is attached as Exhibit C, Mr. Doyle Childers, who succeeded Mr Mahfood as Director of MDNR, relinquished MDNR's right to utilize the railroad lift bridge at Boonville for trail purposes and offered no objection to UP's abandonment and removal of the bridge

6. UP in turn, by letter dated May 25, 2005, a copy of which is attached as Exhibit D, notified the Board that it had consummated the abandonment of the Boonville railroad lift bridge

7. MDNR, however, at no time petitioned the Board to modify its CITU to permit MDNR to terminate its use of the Boonville railroad lift bridge for trails purposes. Cf. STB Docket No AB-563 (Sub-No. 1X), Kansas Eastern Railroad, Inc --Abandonment Exemption--in Butler and Greenwood Counties, KS, served June 10, 2008, STB Docket No AB-853 (Sub-No. 1X), Kansas & Oklahoma Railroad, Inc.--Abandonment Exemption--in Hodgeman, Comanche, Kiowa, and Pratt Counties, KS, served November 13, 2007; STB Docket No. AB-471X, South Kansas and Oklahoma Railroad, Inc --Abandonment Exemption--in Sumner County, KS, served November 13, 2007, STB Docket No AB-471 (Sub-No 1X), South Kansas and Oklahoma Railroad, Inc --

Abandonment Exemption--in Neosho and Wilson Counties, KS, served November 13, 2007, STB Docket No AB-563 (Sub-No. 1X), Kansas Eastern Railroad, Inc.--

Abandonment Exemption--in Butler and Greenwood Counties, KS, served July 30, 2004.

As the Board said in the first of the cited Decisions, "Whenever a trail manager intends to terminate trail use over the right-of-way and sends the Board a request that a NITU be vacated, the Board will reopen the proceeding and vacate the NITU "

8. MDNR did not send the Board a request to modify its CITU, and the Board did not reopen the proceeding and vacate the CITU to terminate MDNR's use of the Boonville railroad lift bridge for trail purposes. The Boonville railroad lift bridge, accordingly, remains available for MDNR's use for trails purposes.

9. The Board did not authorize UP to abandon the Boonville railroad lift bridge, and UP's notice to the Board that it had consummated the abandonment of the Boonville railroad lift bridge, therefore, is null and void

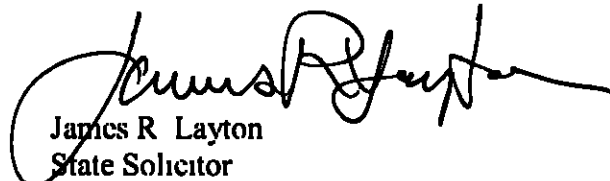
10 The controversy between MDNR and UP needs to be resolved, and the uncertainty as to the status of the Boonville railroad lift bridge needs to be terminated. The Board, of course, has discretionary authority under 5 U S C 554(e) and 49 U S.C. 721 to issue a declaratory order to eliminate a controversy or remove uncertainty STB Finance Docket No 35157, The City of Alexandria, Virginia--Petition for Declaratory Order, served November 6, 2008; STB Finance Docket No. 35164, BNSF Railway Company--Petition for Declaratory Order, served October 2, 2008, STB Finance Docket No 33388 (Sub-No 101), CSX Transportation, Inc --Petition for Declaratory Order, served August 27, 2008

WHEREFORE, Petitioner, the State of Missouri, ex rel Jeremiah "Jay" Nixon, Missouri Attorney General, asks that the Board entertain his Petition for Declaratory Order and institute a proceeding to terminate the controversy between him and UP and remove the uncertainty of the status of the Boonville railroad lift bridge

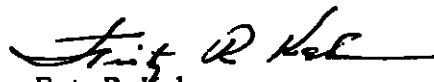
Respectfully submitted,

JEREMIAH W (JAY) NIXON
Missouri Attorney General

By his representatives



James R. Layton
State Solicitor
P O Box 899
Jefferson City, MO 65102
Tel (573) 751- 0638



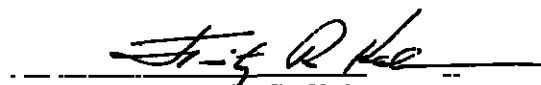
Fritz R. Kahn
Fritz R. Kahn, P.C
1920 N Street, NW (8th fl)
Washington, DC 20036
Tel.. (202) 263-4152

Dated January 12, 2009

CERTIFICATE OF SERVICE

I certify that I this day served a copy of the foregoing Petition for Declaratory Order upon the Union Pacific Railroad Company by e-mailing a copy to its attorney.
Gabriel S Meyer, Esq

Dated at Washington, DC, this 12th day of January, 2009



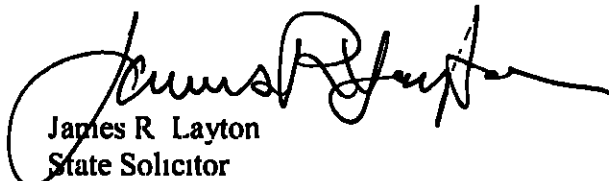
Fritz R. Kahn

WHEREFORE, Petitioner, the State of Missouri, ex rel Jeremiah "Jay" Nixon, Missouri Attorney General, asks that the Board entertain his Petition for Declaratory Order and institute a proceeding to terminate the controversy between him and UP and remove the uncertainty of the status of the Boonville railroad lift bridge


Respectfully submitted,

JEREMIAH W (JAY) NIXON
Missouri Attorney General

By his representatives



James R. Layton
State Solicitor
P O Box 899
Jefferson City, MO 65102
Tel (573) 751- 0638



Fritz R. Kahn
Fritz R. Kahn, P C
1920 N Street, NW (8th fl)
Washington, DC 20036
Tel (202) 263-4152

Dated January 12, 2009

CERTIFICATE OF SERVICE

I certify that I this day served a copy of the foregoing Petition for Declaratory Order upon the Union Pacific Railroad Company by sending a copy by UPS Next Day Air to its attorney, Gabriel S Meyer, Esq

Dated at Washington, DC, this 12th day of January, 2009



Fritz R. Kahn

MISSOURI

AFFIDAVIT

STATE OF TEXAS §

COUNTY OF DALLAS §

Before me on this 3rd day of July, 1987, appeared the undersigned, and having been first duly sworn, on oath deposes and says:

"My name is Raye Reynolds, I am Vice President - Property Management for the Missouri-Kansas-Texas Railroad Company. I hereby certify that the Agreement attached hereto referred to hereby, incorporated herein, and for all purposes made a part hereof, is a true and correct copy of the original Interim Trail Use Agreement between the Missouri-Kansas-Texas Railroad Company and the Missouri Department of Natural Resources, and that it correctly sets forth the agreement between the parties thereto."

Raye Reynolds
Raye Reynolds

Subscribed and sworn to before me this 3rd day of July, 1987, in witness whereof, my hand and seal are hereunto affixed.

Janis M. Aldrich
Notary Public in and for Dallas
County, Texas

My Commission Expires:

June 25, 1989

EXHIBIT A

ORIGINAL

INTERIM TRAIL USE AGREEMENT

Agreement and Contract for Trail use pursuant to Section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) between the MISSOURI DEPARTMENT OF NATURAL RESOURCES (hereinafter MDNR), and the MISSOURI-KANSAS-TEXAS RAILROAD COMPANY (hereinafter MKT).

MDNR and MKT hereby agree to the transfer of the interest of MKT in the property described below to MDNR, for interim trail use, at the price and upon the terms and conditions set forth herein:

1. MKT agrees to accept as full and valid consideration for the above referenced transfer, and MDNR agrees to approve the payment of, the sum of TWO HUNDRED THOUSAND AND NO/100 (\$200,000.00) DOLLARS for all interests of MKT in the property described in paragraph 5 below (hereinafter referred to as the "premises").
2. Contingent upon the issuance of a Certification of Interim Trail Use (CITU) by the Interstate Commerce Commission to MKT in ICC proceeding Docket No. AB-102 (Sub-No. 13), MKT shall convey or cause to be conveyed the premises to MDNR or its designee by quitclaim deed. The grantee in said deed shall be MDNR or its designee as stated in writing by MDNR. A sample deed is attached hereto as Exhibit "A". The sample deed shall be deemed approved unless disapproved in writing by MDNR within thirty (30) days from the execution of this Agreement. In the event of such disapproval MKT shall within thirty (30) days thereof execute and deliver to MDNR a quitclaim deed revised to address MDNR's objections. MDNR shall have the right to have the real property surveyed by a registered surveyor at the expense of MDNR by serving written notice to MKT of its intent to survey the real property within ten (10) days of the date of execution of this Agreement.

A true copy of the survey shall be delivered to MKT at the time of its completion. The description of the real property as set forth in the MDNR survey, if performed, shall be conclusive upon the parties and shall be incorporated by reference and included as a description of the premises to be conveyed (subject to the exclusions contained in Paragraph 6) in final deed documents in lieu of the description contained in Paragraph 6 below. In the absence of notice by MDNR to MKT of its intent to survey the real property, the description of the premises, as set forth in Paragraph 6 of this document, subject to the exclusions contained therein shall be utilized in the final deeds as the description of the premises to be conveyed by MKT to MDNR.

3. This agreement and any conveyance pursuant thereto shall not include rails, ties, wires, signals and other track materials, except ties located upon a bridge or trestle which is subject to this agreement, and mile post markers. Provided, however, that MKT agrees to remove all rails and ties, except ties located upon a bridge or trestle, from the premises within eighteen (18) months from the date of execution of this Agreement except for any portion of the premises which may be used by the St. Charles and Augusta Railroad Company, its successors or assigns, for railroad operations. MKT does not warrant that the property, real or otherwise, conveyed pursuant to this Agreement is suitable for the purposes contemplated herein or any other particular purpose or use. Provided, however, that MKT agrees to conduct salvage operations in a manner which will not adversely affect MDNR's use of the premises as a rail-banked interim trail and that ballast and fill material will not be removed from the property during salvage operations. A copy of this Agreement shall be provided by MKT to any independent contractor conducting salvage operations upon the premises.

4. The parties agree that the time of closing as to the Boonville, North Jefferson and Sedalia depots, and that portion of the premises which is located between Mile Post 141.0 at Jefferson City and Mile Post 179.0 at Rocheport, Missouri, shall be five (5) days following MKT's notice to MDNR that all rail and ties have been removed from such portion of the premises but no later than August 20, 1987, unless postponed as set forth below. As to those portions of the premises to be conveyed pursuant to this paragraph, MDNR reserves the right to inspect the premises prior to the date of closing to ascertain MKT's compliance with the provisions of this contract. MKT agrees to notify MDNR upon completion of salvage operations that the premises is subject to such inspection. MDNR shall be so notified not less than five (5) days prior to the date of closing. In the event that MDNR determines upon inspection that MKT has failed to comply with the provisions of this agreement, MDNR shall notify MKT in writing of the basis for such failure. MKT shall endeavor to correct any such deficiencies which in its opinion are subject to this Agreement, within fifteen (15) days of notice from MDNR indicating MKT's failure to comply with this Agreement. MDNR shall thereafter re-inspect the property within five (5) days of notice from MKT that such deficiencies have been corrected. In the event that MDNR determines that such inspection and re-inspection is necessary, the date of closing shall be postponed if necessary, but shall not be later than ten (10) days following MDNR's re-inspection and determination that the previously noted failures to comply with this Agreement have been corrected. A partial payment in the amount of ONE-HUNDRED EIGHTY THOUSAND (\$180,000.00) DOLLARS shall be made to MKT upon this closing at which time a quitclaim deed, in form for recordation, conveying those portions of the premises which are the subject of this paragraph, shall be delivered to MDNR.

5. The parties agree that closing as to all other portions of the premises as described in paragraph six and not previously conveyed pursuant to paragraph four shall occur not later than eighteen (18) months from the date of execution of this Agreement. MDNR reserves the right to inspect the premises prior to closing as to those portions of the premises conveyed pursuant to this paragraph. MKT agrees to notify MDNR upon completion of salvage operations on any continuous segment located within a single county, that the property is subject to inspection. MDNR shall thereafter inspect the portion of the premises described in such notice within forty-five (45) days. In the event that MDNR determines upon inspection that MKT has failed to comply with the provisions of this Agreement, MDNR shall notify MKT in writing of the basis for such failure. MKT shall endeavor to correct any such deficiencies which in its opinion are subject to this Agreement within thirty (30) days of receipt of MDNR's notice indicating a failure to comply with this Agreement. MDNR shall re-inspect the property within twenty (20) days of notice from MKT that the deficiencies have been corrected. An executed quitclaim deed, in form for recordation, conveying the portion of the premises previously inspected by MDNR, shall be delivered to MDNR within ten (10) days of MDNR's notice to MKT that the inspection or re-inspection has been completed and that MDNR is requesting delivery of the deed conveying the portion of the premises upon which the inspection has been completed. Upon conveyance to MDNR of all portions of the premises which are subject to this Agreement, MDNR shall cause to be delivered to MKT the sum of TWENTY THOUSAND (\$20,000.00) DOLLARS as final payment for the premises. In the event that all deeds shall not have been delivered by the expiration of eighteen (18) months from the

date of execution of this agreement, then at MDNR's option, either:

a. MKT shall pay the Conservation Foundation of Missouri Charitable Trust an amount determined by multiplying the acquisition price set forth in paragraph 1 hereof by a fraction of which the numerator is the number of linear miles of the premises contained in the segment or segments not conveyed, and the denominator is 197.67; and MKT's obligations under this paragraph 5 shall be deemed fulfilled; or

b. MKT shall pay to the Conservation Foundation of Missouri Charitable Trust an amount equal to the entire acquisition price as set forth in paragraph 1 hereof, and MDNR shall reconvey the premises by quitclaim deed to MKT, and this agreement shall cease and terminate, and become null and void; or

c. MDNR may seek conveyance of the remaining segments by means of a suit for specific performance, and MKT agrees, in that event, to pay all court costs and reasonable attorney's fees in connection with such suit, by whichever party or parties incurred, if MDNR succeeds in obtaining a final judgment requiring specific performance.

6. The property to be conveyed by MKT to MDNR consists of all of MKT's right, title, and interest in and to the following described real property and premises, situated in the counties of St. Charles, Warren, Montgomery, Callaway, Boone, Howard, Cooper and Pettis, State of Missouri, and as more generally set-forth in exhibit "B" attached hereto and made a part hereof, save and except those certain exceptions and exclusions set-forth in this paragraph six and any other properties conveyed prior to the date of execution of this agreement, to wit:

A strip of land of varying widths consisting of fee simple and right-of-way interests constituting a continuous corridor beginning at MKT St. Louis Subdivision Main Line Chaining Station 1421+38 (Mile Post 26.92) and extending in a generally westerly direction through the counties of St. Charles, Warren, Montgomery, Callaway, Boone, Howard, Cooper and Pettis to MKT Sedalia Subdivision Main Line Chaining Station 11858+30 (Mile Post 224.59), a distance of one hundred ninety-seven and sixty-seven hundredths (197.67) miles, more or less, together with all rights-of-way, station grounds and other real property associated therewith, not excluded and excepted herein, and all improvements and fixtures located thereon, including the Boonville, Sedalia and North Jefferson depot buildings; all bridges and trestles including ties located thereupon, except the Boonville lift bridge, as hereinafter provided; and all mile post markers, culverts, ballast and similar structures and improvements, but not including rails and ties, wires, signals and other track materials except ties located upon bridges or trestles. The premises is more particularly described as follows:

St. Charles County, Missouri

Commencing at Chaining Station 1421.38, said point being the beginning of MKT ownership of the Main Line track diverging from the Main Line track of the Burlington Northern Railroad, in U.S. Survey 174, Township 48 North, Range 6 East of the 5th Principal Meridian, thence southwesterly, through Township 47 North, Range 6 East; Township 47 North, Range 5 East; Township 46 North, Range 5 East; Township 46 North, Range 4 East; Township 46

North, Range 3 East; Township 45 North, Range 3 East; Township 45 North, Range 2 East; Township 44 North, Range 2 East; Township 44 North, Range 1 East; to the west line of St. Charles County.

Warren County, Missouri

Commencing at the intersection of MKT's St. Louis Subdivision Main Line track and the east boundary line of Warren County, thence northwesterly, through Township 44, Range 1 West of the 5th Principal Meridian; Township 45 North, Range 1 West; Township 45 North, Range 2 West; Township 45 North, Range 3 West; Township 46 North, Range 3 West; Township 46 North, Range 4 West; to the west line of Warren County.

Montgomery County, Missouri

Commencing at the intersection of MKT's St. Louis Subdivision Main Line track and the east boundary line of Montgomery County, thence westerly, through Township 46 North, Range 5 West of the 5th Principal Meridian; Township 46 North, Range 6 West; to the west line of Montgomery County.

Callaway County, Missouri

Commencing at the intersection of MKT's St. Louis Subdivision Main Line track and the east boundary line of Callaway County, thence southwesterly, through Township 46 North, Range 7 West of the 5th Principal Meridian; Township 46 North, Range 8 West; Township 45 North, Range 8 West; Township 45 North, Range 9 West; Township 44 North, Range 9 West; Township 44 North, Range 10 West; Township 44 North, Range 11 West; thence northwesterly through Township 45 North, Range 11 West; to the west line of Callaway County.

Boone County, Missouri

Commencing at the intersection of MKT's St. Louis Subdivision Main Line track and the east boundary line of Boone County, thence northwesterly, through Township 45 North, Range 12 West of the 5th Principal Meridian;

Township 45 North, Range 13 West, Township 46 North, Range 13 West;
Township 47 North, Range 13 West; Township 47 North, Range 14 West;
Township 48 North, Range 14 West; Township 48 North, Range 15 West; to the
west line of Boone County.

Howard County, Missouri

Commencing at the intersection of MKT's St. Louis Subdivision Main Line
track and the east boundary line of Howard County, thence westerly,
through Township 48 North, Range 15 West of the 5th Principal Meridian;
Township 49 North, Range 15 West, Township 49 North, Range 16 West; thence
southerly, through Township 48 North, Range 16 West; to the south line of
Howard County.

Cooper County, Missouri

Commencing at the intersection of MKT's Sedalia Subdivision Main Line
track and the north boundary line of Cooper County, thence southwesterly,
through Township 49 North, Range 17 West of the 5th Principal Meridian;
Township 48 North, Range 17 West; Township 48 North, Range 18 West;
Township 47 North, Range 18 West; Township 47 North, Range 19 West;
Township 46 North, Range 19 West; to the west line of Cooper County.

Pettis County, Missouri

Commencing at the intersection of MKT's Sedalia Subdivision Main Line
track and the east boundary line of Pettis County, thence southwesterly,
through Township 46 North, Range 20 West of the 5th Principal Meridian;
Township 46 North, Range 21 West; to MKT Chaining Station 11858+30 in the
SE 1/4 of the NW 1/4 of Section 36, Township 46 North, Range 21 West.

Also: All of MKT's interest in that certain 47,610 square foot, more or
less, tract of land at the corner of Thompson Avenue and U.S. Highway No.

50, (Third Street), in the City of Sedalia, Missouri, including MKT's former passenger depot building located thereon, all as shown in yellow on a print of MKT's Drawing No. 31,007, dated November 27, 1982, Engineering Department, Denison, Texas, marked Exhibit "C", attached hereto and by this reference made a part hereof.

Excepting and Excluding

Excepting and excluding from the said conveyance all of MKT's interest in the following described parcels of land and/or structures:

St. Charles County, Missouri

A tract or parcel of land at Black Walnut, Missouri, approximately one-hundred (100) feet by one thousand two hundred thirty (1,230) feet, containing 2.82 acres, more or less, lying outside a line parallel to and fifty (50) feet north of the centerline of MKT's St. Louis Subdivision Main Line track, and west of the centerline of a County Road which crosses said Main Line track at approximately Mile Post 29.90.

Howard County, Missouri

All tracts or parcels of land in the City of New Franklin, Missouri, lying outside a line parallel to and fifty (50) feet distant in either direction from the centerline of MKT's St. Louis or Sedalia Subdivision Main Line track.

Howard and Cooper Counties, Missouri

MKT's Boonville Lift bridge, being MKT's Bridge No. 191.1 across the Missouri River at Boonville, Missouri. MKT agrees that said bridge shall be kept available for transportation purposes in accordance with ICC decision ex parte No. 274 (Sub.-No. 13) and that MDNR upon execution of waivers of liability acceptable to MKT may utilize the bridge for trail purposes; provided, however, that MKT reserves the right to modify the bridge structure as may be required to improve rail transportation, so long as MDNR's right to utilize the premises for interim trail use is not adversely affected thereby.

7. MKT agrees to assign to MDNR, as of the date of delivery of deed or deeds, all leases, license and other agreements, hereinafter agreements, executed by MKT and third parties for the use of the premises. The income derived from agreements bearing annual, semi-annual, quarterly, or monthly rental shall be prorated as between MDNR and MKT based upon the ratio of the portion of the current rental period remaining pursuant to the agreement as of the date of delivery of the deed or deeds over total length of current rental period times the income collected for the current rental period.
8. This agreement and any subsequent conveyance are made pursuant to Section 8(d) of the National Trails System Act 16 U.S.C. 1247(d). MKT agrees to defend, indemnify and to hold MDNR harmless from any claim, injury or damage arising from any contamination or pollution of the premises resulting from the application, inadvertent or otherwise, of man-made substances which constitute a danger to public health or the environment. With respect to those portions of the premises for which possession has been delivered to MDNR, MDNR agrees to operate, assume legal liability for the use of, manage, maintain and control the premises in accordance with the laws of the State of Missouri and Provisions of the National Trails System Act and Regulations promulgated pursuant thereto.
9. In the event the Interstate Commerce Commission determines that reactivation of rail service upon the premises is necessary for the public convenience and necessity, the MDNR agrees to transfer said premises to the acquiring entity in accordance with any lawfully applicable Interstate Commerce Commission decision. Provided, however, that should MKT, pursuant to order of the Interstate Commerce Commission, desire to purchase the premises MKT agrees to pay the greater of fair market value of the premises at the time of such lawfully entered Interstate Commerce Commission decision or the sum

of TWO HUNDRED THOUSAND AND NO/100 (\$200,000.00) DOLLARS plus all capital improvements and maintenance costs expended by the MDNR during the term of its possession pursuant to the National Trails System Act. The MDNR agrees to grant first right of refusal to purchase the premises to MKT.

10. MDNR agrees to use its best efforts to defend any litigation contesting the right of the parties hereto to effectuate this Agreement; however, if by final order of a court of competent jurisdiction, within the time limits set forth below, MDNR is prevented or obstructed from utilizing the premises for trail and rail banking purposes, MDNR may request and MKT agrees to refund the sum of TWO HUNDRED THOUSAND AND NO/100 (\$200,000.00) DOLLARS to the Conservation Federation of Missouri Charitable Trust upon receipt of a quitclaim deed from MDNR reconveying the premises to MKT. Provided however, the provisions of this paragraph shall remain in effect only until seven (7) years from date of execution of this Agreement.
11. Except as otherwise provided in paragraph 10 above, the parties agree that if MDNR is unable to utilize the premises, or a portion thereof, for trail purposes within five (5) years from the date of execution of this Agreement, MDNR may request and MKT agrees to refund the sum of TWO HUNDRED THOUSAND AND NO/100 (\$200,000.00) DOLLARS to the Conservation Foundation of Missouri Charitable Trust upon receipt of quitclaim deed from MDNR reconveying the premises to MKT.
12. Any judgment against MKT which may appear of record as a lien against said premises, or a portion thereof, as of the date of MDNR's receipt of the deed for same, shall be settled and satisfied by MKT, if and when it is judicially determined to be finally valid. MKT agrees to defend, hold harmless and indemnify MDNR for all loss arising out of MKT's failure to have said judgment so settled and satisfied.

13. MKT represents that the premises is presently subject to a mortgage or other similar encumbrance and agrees to furnish MDNR with releases within a reasonable time subsequent to execution of this Agreement by both parties, which establish that the property is no longer subject to any encumbrance or mortgage. MKT agrees to defend, indemnify and hold harmless MDNR for all losses arising as a result of MKT's failure to provide such releases or to satisfy and settle any mortgage or other similar encumbrance. MKT shall be responsible for real estate taxes which have accrued as of the date of MDNR's receipt of the deed for the segment upon which such tax is due.
14. MKT agrees to provide MDNR with all original documents, maps, records, deeds and linen drawings which are pertinent to the premises and which MKT deems to be available and unnecessary for retention by MKT. MDNR agrees to retain any such items in a manner so as to protect and preserve their condition or to return them to MKT. MDNR agrees to assume any expense associated with the transfer of such items.
15. All notices shall be served in writing and shall be deemed to have been sufficiently served by either party if sent by registered or certified mail with proper postage prepaid addressed to the other party at the address shown herein.
16. This offer when accepted shall constitute the entire agreement between the parties for the sale and transfer of the property herein described and each and every provision contained herein shall thereafter be binding upon and inure to the benefit of MDNR and MKT, their agents, successors in interest and assigns.

The foregoing agreement is executed by the Missouri Department of Natural Resources this 25 day of June, 1987.

MISSOURI DEPARTMENT OF NATURAL RESOURCES

WITNESS

Kenneth Johnson
109 Sunset Lane
Address Columbia, MO.

By [Signature]
Title Director

The foregoing agreement is executed by Missouri-Kansas-Texas Railroad Company this 25 day of June, 1987.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

~~WITNESS~~ WITNESS

[Signature]
Box 21
Address Box 21, Columbia, MO 65201

By [Signature]
Vice-President

QUITCLAIM DEED

EXHIBIT "A"

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS:

That MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, hereinafter called "GRANTOR", for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) in hand paid by _____ hereinafter called "GRANTEE", the receipt of which is hereby acknowledged, has granted, sold and QUITCLAIMED, and by these presents does grant, sell and QUITCLAIM, unto the said GRANTEE the following described real property situated in the County of _____, State of _____, to wit:

See Exhibit "A", attached hereto and made a part hereof.

TO HAVE AND TO HOLD the above described property and premises unto the said GRANTEE and its assigns forever so that neither GRANTOR nor its successors, legal representatives or assigns shall at any time hereafter have, claim, or demand any right or title to the aforesaid property, premises or appurtenances or any part thereof.

GRANTEE is thoroughly familiar with GRANTOR's right, title and interest in the property described herein; and GRANTOR makes no representations or warranties of any kind or character whatsoever concerning its right, title and interest in and to the property described herein.

GRANTEE accepts this Deed subject to the rights of parties in possession including, but not limited to, encroachments, easements, licenses, encumbrances, agreements, restrictions and ordinances affecting the property herein described. GRANTOR and GRANTEE agree that each and every provision of this deed is subject to the terms and conditions of the

~~EXHIBIT~~ "A"

agreement for Interim Trail use entered between the parties, which is attached hereto and incorporated by reference as exhibit one and the Provision of the National Trails System Act. It is also agreed that in the event a conflict exists between the provisions of this deed and exhibit one the provision of exhibit one shall prevail.

EXECUTED THIS ____ DAY OF _____, A.D. 1987.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By: _____
Vice President

ATTEST:

Secretary

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared, Raye Reynolds, Vice President of the Missouri-Kansas-Texas Railroad Company, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Missouri-Kansas-Texas Railroad Company, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 1987.

Notary Public in and for the State of Texas

My commission expires _____

EXHIBIT "B"

DOCUMENTS TO DEFINE THE MISSOURI RIVER TRAIL

FROM MILE	TO MILE	MKT DIVISION	MKT MAP NUMBER	DNR LAND SURVEY DOCUMENT NUMBER
26.92	30	ST LOUIS	M-1A V 1	750- 24132
30	34	ST LOUIS	M-1A V 2	750- 24133
34	38	ST LOUIS	M-1A V 3	750- 24134
38	42	ST LOUIS	M-1A V 4	750- 24135
42	46	ST LOUIS	M-1A V 5	750- 24137
46	50	ST LOUIS	M-1A V 6	750- 24138
50	54	ST LOUIS	M-1A V 7	750- 24139
54	58	ST LOUIS	M-1A V 8	750- 24140
58	62	ST LOUIS	M-1A V 9	750- 24141
62	66	ST LOUIS	M-1A V 10	750- 24142
66	70	ST LOUIS	M-1A V 11	750- 24143
70	74	ST LOUIS	M-1A V 12	750- 24144
74	78	ST LOUIS	M-1A V 13	750- 24145
78	82	ST LOUIS	M-1A V 14	750- 24147
82	86	ST LOUIS	M-1A V 15	750- 24148
86	90	ST LOUIS	M-1A V 16	750- 24149
90	94	ST LOUIS	M-1A V 17	750- 24150
94	98	ST LOUIS	M-1A V 18	750- 24151
98	102	ST LOUIS	M-1A V 19	750- 24152
102	106	ST LOUIS	M-1A V 20	750- 24153
106	110	ST LOUIS	M-1A V 21	750- 24154
110	114	ST LOUIS	M-1A V 22	750- 24155
114	118	ST LOUIS	M-1A V 23	750- 24156
118	122	ST LOUIS	M-1A V 24	750- 24157
122	126	ST LOUIS	M-1A V 25	750- 24158
126	130	BOONVILLE	M-1A V 26	750- 24160
130	134	BOONVILLE	M-1A V 27	750- 24161
134	138	BOONVILLE	M-1A V 28	750- 24162
138	142	BOONVILLE	M-1A V 29	750- 24163
142	146	BOONVILLE	M-1A V 30	750- 24164
146	150	BOONVILLE	M-1A V 31	750- 24166
150	154	BOONVILLE	M-1A V 32	750- 24167
154	158	BOONVILLE	M-1A V 33	750- 24169
158	162	BOONVILLE	M-1A V 34	750- 24170
162	166	BOONVILLE	M-1A V 35	750- 24171
166	170	BOONVILLE	M-1A V 36	750- 24172
170	174	BOONVILLE	M-1A V 37	750- 24173
174	178	BOONVILLE	M-1A V 38	750- 24174
178	182	BOONVILLE	M-1A V 39	750- 24175
182	186	BOONVILLE	M-1A V 40	750- 24176
186	189.24	BOONVILLE	M-1A V 41	750- 24177
189.24	191.15	BOONVILLE	M-2 V 27	750- 24179
191.16	195	BOONVILLE	M-3A V 1	750- 24181
195	199	BOONVILLE	M-3A V 2	750- 24184
199	203	BOONVILLE	M-3A V 3	750- 24185
203	207	BOONVILLE	M-3A V 4	750- 24186
207	211	BOONVILLE	M-3A V 5	750- 24187
211	215	BOONVILLE	M-3A V 6	750- 24188
215	219	BOONVILLE	M-3A V 7	750- 24189
219	223	BOONVILLE	M-3A V 8	750- 24190
223	227	BOONVILLE	M-3A V 9	750- 24191

7:3

QUITCLAIM DEED

STATE OF TEXAS §
COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS:

That MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, hereinafter called "GRANTOR", for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) in hand paid by MISSOURI DEPARTMENT OF NATURAL RESOURCES, hereinafter called "GRANTEE", the receipt of which is hereby acknowledged, has granted, sold and QUITCLAIMED, and by these presents does grant, sell and QUITCLAIM, unto the said GRANTEE the following described real property situated in the County of Howard, State of Missouri, to wit:

See Attachment "A", attached hereto and made a part hereof.

TO HAVE AND TO HOLD the above described property and premises unto the said GRANTEE and its assigns forever so that neither GRANTOR nor its successors, legal representatives or assigns shall at any time hereafter have, claim or demand any right or title to the aforesaid property, premises or appurtenances or any part thereof.

GRANTEE is thoroughly familiar with GRANTOR'S right, title and interest in the property described herein; and GRANTOR makes no representations or warranties of any kind or character whatsoever concerning its right, title and interest in and to the property described herein.

GRANTEE accepts this Deed subject to the rights of authorized parties in possession, including and limited to those holding under encumbrances, leases, easements, licenses and agreements executed in writing prior to the date of this deed, and ordinances in effect at the time of this deed, affecting the property herein described. GRANTEE agrees to accept the property herein described including property where there may be asserted claims or encroachments. GRANTOR shall be under no duty with respect to encroachments and shall have no obligation to remove them, but nothing contained herein shall limit the right of GRANTEE to take whatever actions it deems appropriate to effectuate the removal of such encroachments, and nothing contained herein shall create any rights in third parties to use or occupy any property herein described, including encroachments. GRANTOR and GRANTEE agree that each and every provision of this Deed and all rights of parties set forth in this paragraph are subject to and shall be governed by the terms and conditions of the Agreement for Interim Trail Use entered between the parties, which is attached hereto and incorporated by reference as Exhibit 1 and the Provisions of the National Trails System Act. It is also agreed that in the event a conflict exists between the provisions of this Deed and Exhibit 1, the provisions of Exhibit 1 shall prevail.

EXECUTED THIS 9th DAY OF November, A.D. 1987

ATTEST:

By: [Signature]
Vice President

[Signature]
Secretary

789

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for said State on this day personally appeared, Raye Reynolds, Vice President of the Missouri-Kansas-Texas Railroad Company, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Missouri-Kansas-Texas Railroad Company, a corporation, and that she executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 14th day of January, 1987.

James W. Stedman
Notary Public in and for the
State of Texas
James W. Stedman

My commission expires:

11-25-88

IN THE RECORDER'S OFFICE

STATE OF MISSOURI)
COUNTY OF HOWARD) ss

RECORDED

I, Charles L. Macomber, Recorder, do hereby certify that the within instrument was filed for record in my office on the 8th day of January, 1988, at 2:45 P.M., and is recorded in Book 260, at Page 788.

Charles L. Macomber
Recorder of Deeds

700

ATTACHMENT "A"

A strip or parcel of land of varying widths on either side of the centerline of Grantor's former St. Louis Subdivision main track, beginning at a point in said centerline 1,078 feet distant, measured westerly along said centerline, from its intersection with the east boundary line of Howard County, Missouri, and continuing in a generally westerly direction through Township 48 North, Range 15 West of the 5th Principal Meridian; Township 49 North, Range 15 West; Township 49 North, Range 16 West; to a point in Section 32 of the last-named Township, being the junction of Grantor's former St. Louis Subdivision and Grantor's former Moberly Branch, in the town of Franklin, Missouri; thence in a generally southerly direction through the said Township 49 North, Range 16 West, to the intersection of said main track centerline with the north bank of the Missouri River;

Save and except, however, the following:

- (1) All tracts or parcels of land in the City of New Franklin, Missouri, lying outside a line parallel to and fifty (50) feet distant in either direction from the centerline of Grantor's former St. Louis or Sedalia Subdivision main track, and
- (2) Grantor's Boonville lift bridge, being Bridge No. 191.1 across the Missouri River at Boonville, Missouri, together with all piers, abutments, approaches and appurtenances thereto, and the land thereunder;

It being Grantor's intention to convey hereby all of its remaining St. Louis and Sedalia Subdivision right-of-way in Howard County, Missouri, save and except Grantor's New Franklin yard and station grounds and its Boonville lift bridge, as aforesaid.



Bob Holden, Governor • Stephen M. Mahfood, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

December 23, 2004

UNION PACIFIC CORPORATION
CHAIRMAN'S OFFICE

DEC 27 2004

Mr. Richard K. Davidson
Chairman and Chief Executive Officer
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Mike Hemme
Bill Wimmer
for response
CC: Mike E
Jim Y
Bob Z.
D. Duffer

Re: 1987 Interim Trail Use Agreement; Katy Trail; MKT Bridge No. 191.1

Dear Mr. Davidson

This letter is to advise that the Missouri Department of Natural Resources (MDNR), pursuant to paragraph 6 of the above-referenced agreement, elects to utilize the former MKT's Boonville lift bridge, being MKT's Bridge No. 191.1, for trail purposes. Under the terms of the above-referenced agreement, MDNR thus now may employ the bridge for trail purposes, subject only to the execution of "waivers of liability acceptable to MKT." As provided in our earlier "statement of willingness" filed with the Interstate Commerce Commission (ICC), subject of course to the terms of the 1987 Interim Trail Use Agreement, and as indicated in the applicable interim trail use authorization from the ICC, the Department will assume full responsibility for taxes (if any), management and legal liability for the structure. This covers all "waivers of liability" referenced in the statute, applicable regulations, or agreement. Copies of our "statement of willingness" and the applicable ICC order are attached. However, we are prepared to discuss further documentation should you so wish. That discussion can also cover other issues, including specifically the matter raised in the next paragraph of this letter.

Paragraph 6 of the 1987 Interim Trail Use Agreement allows MKT to modify the bridge structure "as may be required to improve rail transportation, so long as MDNR's right to utilize the premises for interim trail use is not adversely affected thereby." It has come to our attention that a span of the Boonville lift bridge has been removed. We have no record of MKT or Union Pacific as its successor notifying MDNR of this removal, much less seeking authorization from (or acquiescence of) MDNR for the removal. The removal of the span without any replacement is not only inconsistent with rail transportation on the remainder of the bridge but also obviously

Integrity and excellence in all we do



EXHIBIT B



Mr. Richard K. Davidson
December 23, 2004
Page 2

adversely affects MDNR's "right to utilize the premises for interim trail use" because it destroys a portion of the premises essential for such use. Moreover, it might adversely impact preservation of all or portions of the remainder of the railroad corridor railbanked in ICC Dkt. AB-102 (Sub-no 13), Missouri-Kansas-Texas Railroad Company. The removal thus violates the 1987 Agreement. MDNR wishes to discuss with Union Pacific appropriate action on the part of the railroad to restore the missing portion of the bridge in a fashion compatible with interim trail use.

Although we have recently learned that Union Pacific intends to remove remaining portions of the Boonville Lift Bridge, we note for the record that we have not been formally notified of such intent, nor has our acquiescence been sought in such removal, as would be required under paragraph 6 of the Interim Trail Use Agreement. MDNR does not acquiesce in the removal of any portions of the Boonville Lift Bridge, because, as indicated, MDNR seeks use of the premises for interim trail use, as is MDNR's right under the applicable contract. Removal of the bridge is not consistent with MDNR's right to use the premises for interim trail use, and such removal without MDNR's consent would make Union Pacific liable for damages and for restoration of the bridge.

MDNR intends to use the bridge for trail purposes as soon as possible. This would appear to obviate the United States Coast Guard's concern that the bridge is not being used for transportation purposes, which we understand to be a driving force in Union Pacific's current planning in connection with the bridge. In order for MDNR expeditiously to employ the bridge for trail purposes, certain work must be performed to equip the bridge for interim trail purposes. The planning for this work would be materially assisted if we could obtain copies of all records from the railroad relating to the design, inspection, and safety of the Boonville lift bridge. We accordingly hereby request those records insofar as they are in the possession of Union Pacific. In addition, we wish to conduct an on-site examination of the bridge. While the 1987 Interim Trail Agreement does not provide that MDNR requires further MKT approval or authorization for inspection or trail development once MDNR elects to employ the bridge for trail use (probably because under 16 U.S.C. 1247(d) MDNR must hold MKT -- now Union Pacific -- harmless from tort claims arising in connection with trail use), as a matter of courtesy we cordially invite representatives of Union Pacific to join us for this purpose on January 26, 2005. We would appreciate receipt of copies of documents relating to design, inspection and safety of the bridge a week prior to that date.

We would also take this opportunity initially to respond to a couple points in a letter dated October 25, 2004 from Mr. Wimmer, Vice President of Engineering for UP, to me. Mr. Wimmer suggests that the bridge may not qualify for interim trail use because (a) the 1987 agreement allegedly excluded it, and (b) MDNR had not executed "waivers of liability" for it. The 1987 Agreement did not include the bridge in the initial transfers of property, but the Agreement did not exclude the bridge from interim trail use. To the contrary, the Agreement on its face anticipated that MKT would maintain the bridge, with the power to modify it for rail use but only insofar as consistent with interim trail use by MDNR, until such time as MDNR elected to operate an interim trail upon it. All that has happened is MDNR has now elected to operate an

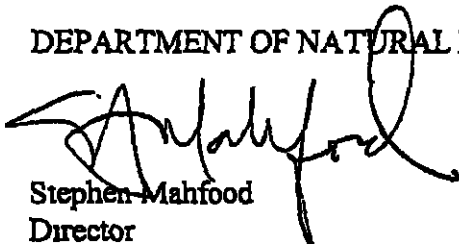
Mr. Richard K. Davidson
December 23, 2004
Page 3

interim trail upon the bridge, under and pursuant to the 1987 Agreement. As to "waivers of liability," Mr. Wimmer himself refers to the requirement embodied in 16 USC 1247(d) that the interim trail manager assume full responsibility for legal liability for the bridge. As I indicate in the first paragraph of this letter, we are so prepared. Since the ICC railbanking order applied to the entire railroad corridor and since this order to the best of our knowledge has never been modified to remove the Boonville lift bridge, the bridge obviously remains under ICC (now STB) railbanking jurisdiction.

The railroad corridor of which the Boonville Lift Bridge has historically been a part is now the Katy Trail State Park. The Katy Trail State Park is a tremendous asset held in trust for the people of Missouri. Full incorporation and development of the Boonville Lift Bridge into the State Park will make it even better. In and of itself, the bridge is a historic asset and an engineering marvel which constitutes an irreplaceable part of our river heritage. Mr. Davidson, this appears to be a once-in-a-lifetime opportunity both to improve the Katy Trail for all Missourians while preserving a piece of our state's priceless history and helping the city of Boonville meet its economic and tourism goals. Please, we cannot let this opportunity pass. MDNR looks forward to working with Union Pacific to make this unique improvement to the Katy Trail. Thank you so very much.

Sincerely,

DEPARTMENT OF NATURAL RESOURCES



Stephen Mahfood
Director

SM:jm

Enclosures:

original statement of willingness

April 27, 1987 Notice of Interim Trail Use

c J Michael Hemmer, Senior Vice President, Law and General Counsel
Union Pacific Railroad Company
Danielle A. Blanck, Mayor of Boonville
Bill Bryan, Deputy Chief Counsel, Missouri Attorney General's Office

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

State Board of Conservation • Game & Fish • Parks • Historic Sites

May 20, 2005

CERTIFIED MAIL #7001 1940 0002 6946 8041
RETURN RECEIPT REQUESTED

Mr. William E. Wimmer
Vice President - Engineering
Union Pacific Railroad Company
1400 Douglas Street
STOP 0910
Omaha, NE 68179

RE. Former MKT Missouri River Bridge 191.1 at Boonville, MO

Dear Mr. Wimmer:

*This letter is in reference to the Interim Trail Use Agreement ("ITUA") between the Missouri Department of Natural Resources ("MDNR") and the Missouri-Kansas-Texas Railroad Company ("MKT"), predecessor in interest of Union Pacific Railroad Company ("UP"), dated June 25, 1987.

Paragraph 6 of the ITUA provides, in relevant part, as follows:

"MKT agrees that said bridge [MKT Bridge No. 191.1 at Boonville] shall be kept available for transportation purposes in accordance with ICC decision ex parte no 274 (Sub -No. 13) and that MDNR upon execution of waivers of liability acceptable to MKT may utilize the bridge for trail purposes; provided, however, that MKT reserves the right to modify the bridge structure as may be required to improve rail transportation, so long as MDNR's right to utilize the premises for interim trail use is not adversely affected thereby."

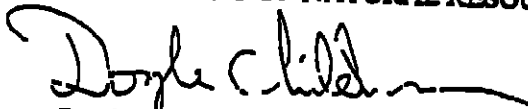
0

Mr. William E Wimmer
Page Two

By this letter, MDNR is permanently waiving its right under the above quoted language to utilize the bridge for trail purposes and releasing UP from any obligation under the ITUA to keep the bridge available for transportation purposes. Further, by waiving this right MDNR terminates any responsibility or assumption of liability for the bridge. Accordingly, MDNR has no objection to UP consummating the abandonment of the bridge and removing it at UP's sole cost.

Sincerely,

DEPARMENT OF NATURAL RESOURCES


Doyle Childers
Director



Contains Color Images

May 25, 2005

Via E Filing

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Notice of Consummation (Boonville Lift Bridge)

Docket No. AB-102 (Sub-No. 13); Missouri-Kansas-Texas Railroad Company – Abandonment – In St. Charles, Warren, Montgomery, Callaway, Boone Howard, Cooper and Pettis Counties, MO

Dear Mr. Williams:

This refers to the Certificate of Interim Trail Use or Abandonment served in this proceeding on April 27, 1987, a copy of which is attached as Exhibit 1 for ready reference. The CITU covered the entire 199.92 mile line of railroad involved in the proceeding, between milepost 26.92 near Machens and milepost 226.84 near Sedalia, MO. Union Pacific Railroad Company ("UP") is the successor in interest to the Missouri-Kansas-Texas Railroad Company (MKT), the applicant in this proceeding.

This letter is UP's formal notice that it has consummated the abandonment of the segment of the corridor comprising the Boonville Lift Bridge over the Missouri River at MKT milepost 191.1, effective May 25, 2005. The consummation is only as to the bridge, not to any other part of the corridor.

As explained below, while the bulk of the corridor involved in the above proceeding was conveyed to the Missouri Department of Natural Resources ("MDNR") under a 1987 Interim Trail Use Agreement, the conveyance did not include the Boonville Lift Bridge, and there has never been an agreement meeting the requirements of the National Trail Systems Act or the CITU for this bridge. Accordingly, under the terms of the CITU, UP is free to fully abandon this structure. MDNR has recently agreed to consummation of the abandonment as to the bridge (see letter attached as Exhibit 3) and UP is, accordingly, exercising its right under the CITU to fully abandon it.

Robert T. Opal
General Commerce Counsel

EXHIBIT D

UNION PACIFIC RAILROAD
1400 Douglas S. Stop 1580, Omaha, NE 68175-1580
ph (402) 544-1077 / fx (402) 501-0132
rtopal@up.com

1

LF 604

We are not requesting any affirmative action from the Board, since this notice of consummation is self-executing. Nevertheless, we are providing the following information as background for the Board:

- 1 On April 27, 1987, the ICC served a Certificate of Interim Trail Use or Abandonment ("CITU") in this proceeding authorizing MKT and MDNR to negotiate trail use of the entire corridor (including the Boonville Lift Bridge). The CITU ordered, among other things, that a trail use agreement require the trail user to either assume liability for the property or (if the user was immune from liability) indemnify the railroad against potential liability (Ordering Paragraph #2). The CITU also authorized MKT to abandon the line if an interim trail use agreement was not made (Ordering Paragraph #5). A copy of the CITU is attached as Exhibit 1 for ready reference.
- 2 The MKT entered into an Interim Trail Use Agreement with the Missouri Department of Natural Resources (MDNR) dated June 25, 1987 ("Agreement") under which MDNR acquired the right-of-way. A copy of the original Agreement (not including exhibits) is attached as Exhibit 2.
- 3 The Boonville Lift Bridge was expressly excluded from the property conveyed to MDNR (Agreement, Section 6, pp. 6 and 9). Further, under Section 8 of the Agreement (p. 10), MDNR expressly assumed legal liability only with respect to "those portions of the premises for which possession has been delivered to MDNR", which did not include the Boonville Lift Bridge. As such, the requirements of the National Trails System Act and of the CITU were not met as to the bridge when the Agreement was made.
- 4 Under Section 6 (p. 9) of the Agreement, MDNR was given the right to utilize the Boonville Lift Bridge for interim trail use upon execution of waivers of liability acceptable to MKT. In effect, this provision gave MDNR the option to utilize the bridge as a trail at a later date, by meeting the requirements for interim trail use for the bridge at such time (and if) it decided to exercise the option.
- 5 MDNR has developed a major trail on the right-of-way known as the "Katy Trail". However, MDNR has never utilized the bridge for trail use under Section 6, and has never assumed liability for the bridge consistent with the CITU. The bridge has thus remained unused, with the lift span in the raised position. Instead of using the railroad bridge to cross the Missouri River at Boonville, the Katy Trail was routed over a nearby highway bridge.

- 6 By letter dated May 20, 2005, MDNR has formally waived its rights under Section 6 of the 1987 Agreement to use the Boonville Lift Bridge for interim trail use, and released UP from any obligation to retain the bridge for possible future trail use. A copy of MDNR's letter is attached as Exhibit 3. The MDNR letter expressly permits UP to consummate abandonment as to the bridge, and to remove it at UP's sole cost.
- 7 The U S Coast Guard has been demanding that UP remove the Boonville Lift Bridge since 1991 (Exhibit 4). UP is currently prepared to undertake the removal as soon as the necessary permits are received from the Coast Guard and from the Army Corps of Engineers. UP intends to use some of the spans from the Boonville Lift Bridge to double track its Osage River bridge at Osage City, MO to provide needed additional capacity on UP's main line between St. Louis and Kansas City, MO.
- 8 The Coast Guard and the Army Corps of Engineers are addressing Section 106 Historic Preservation requirements as to the bridge as part of their permitting processes, and a draft MOU is pending approval.
- 9 The consummation of the abandonment as to the Boonville Lift Bridge, and its removal, will not affect the eligibility of any other part of the Katy Trail corridor for trail use under the National Trail Systems Act, see Docket No. AB-3 (Sub-No. 130, Missouri P. R. Co. - Abandonment (decision served August 4, 1999), p. 3, Docket No. AB-406 (Sub-No. 6X), Central Kansas R. Co. - Abandonment Exemption, (decision served December 8, 1999), p. 7, fn. 12-13. The segments of the trail corridor on both sides of the bridge connect with the national railroad network at multiple locations. The segment north of the bridge (Boonville to Machens) connects with NS at St. Charles, MO and BNSF at Machens, MO. The segment south of the bridge (Boonville to Clinton)¹ connects with UP at Boonville and Sedalia, MO and with the Missouri and Northern Arkansas Railroad at Clinton, MO. This segment also connects with a former CRI&P line at Windsor, MO which is out of service but not abandoned.² A map showing the trail corridor and the intersecting rail lines is attached as Exhibit 5.

We are forwarding the original and ten (10) copies of this letter and the attached exhibits for the Board's files via UPS Overnight. Please feel free to contact me should you have any questions.

1 The 1987 Agreement as originally executed covered the corridor from Machens to Sedalia. The segment between Sedalia and Clinton was added later, see Docket No. AB-102 (Sub-No. 16), Missouri-Kansas-Texas R. Co. - Abandonment - In Pettis and Henry Counties, MO. (CITU served April 26, 1991).

2 The former CRI&P line is owned by a short line railroad and is the line involved in Lee's Summit v. STB, 231 F.3d 39 (D.C. Cir. 2000).

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. T. Opal', written over the printed name.

Robert T. Opal
General Commerce Counsel
Direct dial 402/544-3072
Fax 402/501-0132

CERTIFICATE OF SERVICE

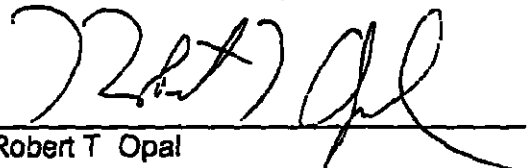
I certify that I have this date served a copy of the foregoing document on the persons listed below by First Class, United States Mail

Doyle Childers, Director
State of Missouri
Department of Natural Resources
P O Box 176
Jefferson City, MO 65101

Roger K Wiebusch
Bridge Administrator
United States Coast Guard
1222 Spruce Street
St Louis, MO 63103-2832

William Bryan, Esq
Deputy Chief Counsel
State of Missouri
Office of Attorney General
221 West High Street, 8th Floor
Jefferson City, MO 65101

Dated at Omaha, NE this 25th day of May, 2005


Robert T Opal